

1 STATE OF MICHIGAN  
2 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM  
3 CIVIL DIVISION

4 GRACIE WEBSTER and  
5 VERONICA THOMAS,

6 Plaintiffs,  
7 v  
8

9 Case No. 13-734-CZ  
10 Hon. Rosemarie Aquilina

11 THE STATE OF MICHIGAN; RICHARD  
12 SNYDER, as Governor of the State  
13 of Michigan; and ANDY DILLON,  
14 as Treasurer of the State of  
15 Michigan,

16 Defendants.  
17 /

18 ROBBIE FLOWERS, MICHAEL WELLS,  
19 JANET WHITSON, MARY WASHINGTON,  
20 and BRUCE GOLDMAN,

21 Plaintiffs,  
22 v  
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24 Case No. 13-729-CZ  
25 Hon. Rosemarie Aquilina

26 RICK SNYDER, as the Governor of the  
27 State of Michigan; ANDY DILLON, as  
28 the Treasurer of the State of Michigan;  
29 and the STATE OF MICHIGAN,

30 Defendants.  
31 /

32 MOTION TO AMEND PRELIMINARY INJUNCTION

33 MOTION FOR DEFAULT JUDGMENT

34 MOTION FOR SUMMARY DISPOSITION

35 BEFORE THE HON. ROSEMARIE AQUILINA, CIRCUIT JUDGE

36 Ingham County, Michigan - Friday, July 19, 2013

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1 APPEARANCES:

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For Plaintiffs Webster, et al.:

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1                   T A B L E       O F     C O N T E N T S

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5                   WITNESSES:

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11                  EXHIBITS:

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<p>1                   Ingham County, Michigan      2                   Friday, July 19, 2013 - At 11:25 a.m.      3                   THE COURT: Okay. All right. Robert Flowers,      4 Michael Wells, Janet Whitson, Mary Washington, and Bruce      5 Goldman versus Rick Snyder, as the Governor of the State      6 of Michigan; Andy Dillon, as the Treasurer of the State      7 of Michigan; and the State of Michigan, Docket 13-729-CZ.      8                   Counsel, your appearance for the record.      9                   MR. WERTHEIMER: William Wertheimer,      10 your Honor, on behalf of Plaintiffs.      11                  MR. CANZANO: Your Honor, John Canzano. I'm      12 not counsel in that case. I'm here on the Webster case.      13                  THE COURT: Okay. Thank you.      14                  MR. QUASARANO: Thomas Quasarano, Assistant      15 Attorney General on behalf of the State Defendants.      16                  MR. DEVLIN: And Brian Devlin, Assistant      17 Attorney General.      18                  THE COURT: Thank you.      19                  Counsel?      20                  MR. WERTHEIMER: Your Honor, Plaintiffs are      21 here today in order to request that the Court enter      22 either a corrected or amended preliminary injunction      23 order. The Court, I'm sure, recalls the circumstances      24 yesterday. We have had a chance to have your order      25 typed. We reviewed it. There were some mistakes in it.</p>	<p>1 whatever the Court's preference would be.      2                   THE COURT: Well, I'm going to sign this, and I      3 haven't compared the two. I think we probably should      4 call it an amended order.      5                   MR. WERTHEIMER: Okay.      6                   THE COURT: But let me just say that your stay      7 is denied.      8                   MR. QUASARANO: Thank you, your Honor.      9                   Maybe --      10                  THE COURT: Counsel?      11                  MR. QUASARANO: Maybe doing another separate      12 order makes the most sense, and we can do that using the      13 forms provided by the Court.      14                  THE COURT: Okay. Thank you.      15                  MR. QUASARANO: Thank you.      16                  MR. WERTHEIMER: Your Honor, one other thing      17 that may be related to that, and that is, the order the      18 Court is entering, consistent with the order the Court      19 entered yesterday, provides us with the relief that we      20 were seeking by our motion which was scheduled for      21 hearing Monday at 9 o'clock.      22                  The Attorney General had also noticed a motion      23 to dismiss for Monday at 9 o'clock. It was not timely in      24 the sense that he did not give the appropriate time      25 period for us to respond. In the reply brief I filed</p>
<p>4</p> <p>1                  For example, the heading still said temporary restraining      2 order from the other case where it was clear from the      3 record and from the body, even, of the order that it was      4 a preliminary injunction. So we made that change. We      5 typed everything. We put in the attorneys' names and the      6 case name.      7                  We made a couple of other changes, which I have      8 indicated to the Court off the record on another copy of      9 the injunctive order. And I would -- we would -- I'm      10 happy to go over each of those, if the Court needs.      11 Otherwise, I would request that the Court issue this      12 preliminary injunction. I did not know whether the Court      13 would want to refer to it as corrected, amended, or not      14 refer to it at all. So I left that blank. But we would      15 ask that the Court enter the order that we presented      16 today to conform to the Court's ruling yesterday.      17                  THE COURT: Counsel?      18                  MR. QUASARANO: Yes, your Honor. As your Honor      19 knows, we moved for a stay, and so I would ask either      20 that the stay that was denied yesterday be identified in      21 the modified order, or we can present another stay. I      22 would assume that the Court would not grant a stay of      23 this order consistent with yesterday. So either to      24 identify it in this modified order as a stay was      25 requested and denied, or we can just do another order,</p>	<p>6</p> <p>1 yesterday, we objected to that and said that we did not      2 agree to expedited. There was no order expediting and      3 suggested that the Court deny the -- their motion for      4 that reason, but I raise it now just to indicate that      5 that also is out there and that maybe we want -- we want      6 another order dealing with that issue.      7                  Our position is that it's not timely and that      8 it shouldn't be heard Monday-in any event. I don't know      9 whether the Attorney General intends to proceed on Monday      10 on it.      11                  MR. QUASARANO: Your Honor, we do understand      12 that under MCR 2.119, the motion for summary disposition      13 is a 21-day period. We sought stipulation of counsel.      14 They were kind enough to look at the briefs first to      15 decide whether they would stipulate. They chose not to.      16                  We also sought the endorsement on our notice of      17 hearing from the Court to allow the hearing on Monday.      18 Yesterday at bench we discussed if we needed to -- we      19 needed to set a hearing date on the dispositive motions.      20 The Court is at liberty to have those heard today or on      21 Monday or at such other time. Our notice of hearing did      22 say "or at such other time as the Court may order" on the      23 notice of hearing itself. Thanks.      24                  MR. CANZANO: Your Honor, if I could make a      25 point that is related to that issue?</p>
<p>13-53846-tjt Doc 1219-10 Filed 10/17/13</p>	<p>Entered 10/17/13 13:56:17 Page 4 of 13</p>

1 THE COURT: Yes, sir.  
2 MR. CANZANO: We've -- we've presented a motion  
3 this morning, an emergency motion, to advance the hearing  
4 on our motion for declaratory judgment that's set for  
5 Monday to today. It would be my intention to deal only  
6 with the declaratory judgment part of it today, not the  
7 injunction part of it. And they've already -- they've  
8 agreed that that can be expedited. I don't know that  
9 they've agreed that it can be expedited to today, but  
10 they agree that it could be expedited to Monday.

11 So if -- that part of it, either today or  
12 Monday, that would be a final declaratory judgment. My  
13 preference is to do it today.

14 THE COURT: Is that correct?

15 MR. QUASARANO: Well, I believe under 2.605(D),  
16 they can seek an expedited hearing, and certainly the  
17 Court has the authority to issue that. I think by not  
18 entertaining a dispositive motion, we're not going to  
19 have a complete argument. Mr. Devlin will be arguing for  
20 the State. But we do acknowledge what the court rule  
21 says, that's correct.

22 THE COURT: Well, are you objecting to having  
23 it heard today?

24 MR. QUASARANO: We will not object in the  
25 interest of judicial economy.

8

1 -that; or will you be amending that?

2 MR. QUASARANO: No. I'll speak for Mr. Devlin  
3 here for a moment only. In the notice of hearing, we  
4 indicated to advance it to that date because of all the  
5 other activities in this case or such other time as the  
6 Court may order.

7 I do point out that in the Flowers case in the  
8 prayer for relief is a reference to declaratory judgment.  
9 Both cases are asking for both reliefs; preliminary and  
10 declaratory judgment. Preliminary injunction motions  
11 were granted. Our brief talks about the alternative,  
12 assuming arguendo there were a filing, a Chapter 9  
13 filing, and then we go into the basis for why there are  
14 grounds not to declare judgment, why there is some  
15 jurisdictional grounds.

16 So I think that the brief is sufficiently  
17 adequate to address all of the issues that are still at  
18 issue in this case. Certainly there has been a factual  
19 change and those factual changes don't need to be  
20 addressed.

21 MR. WERTHEIMER: I guess I just would reiterate  
22 if -- I need to know whether counsel is going forward on  
23 Monday with its motion to dismiss. I still haven't heard  
24 a yes or no.

25 THE COURT: His answer is yes, Counsel.

10

1 THE COURT: And your motion deals with that  
2 issue?

3 MR. QUASARANO: It's a (C)(8) motion that would  
4 address whether there are grounds for a declaratory  
5 judgment, yes.

6 THE COURT: Well, then --

7 I'm sorry?

8 MR. WERTHEIMER: I'm sorry. I may be confused  
9 now. Their motion that they filed in the Flowers case to  
10 dismiss deals with issues like ripeness. It's a (C)(4)  
11 and (C)(8) motion. Many of the facts have changed. I  
12 would think they would want to refile that, in any event.  
13 I mean, you know, to make an argument based on -- based  
14 on ripeness given what happened yesterday afternoon seems  
15 to me to be just, to use a lawyer's word, moot at this  
16 point. But I'm concerned only with their motion to  
17 dismiss in the Flowers case, not with anything related to  
18 Webster and whether we're to appear here Monday at 9 to  
19 -- per their notice or whether they've withdrawn that  
20 motion or not.

21 THE COURT: Okay. Well, let's deal with the  
22 Flowers case.

23 What is your intention in regard to Monday?

24 Are you still asking the Court to hear your motion? It  
25 was not timely filed. Are you still asking me to hear

1 MR. WERTHEIMER: Well, okay. If the answer is  
2 yes, I would just point out that it's clear under the  
3 rules that it is not timely; that no order has entered  
4 from this Court.

5 THE COURT: You're right.

6 MR. WERTHEIMER: Okay.

7 THE COURT: You know what we're doing? We are  
8 under siege here. Well, we aren't; I'm not. Technically  
9 I am through paper, but all of you are. Detroit is. The  
10 State is. So I'm not going to go through the usual court  
11 rules and the time and all of that. You are all going to  
12 spend your weekend doing what lawyers do, and that's a  
13 lot of homework because we're going to have that hearing  
14 Monday unless you're asking me to do it now.

15 I'm going to hear everything because we're not  
16 going to piecemeal this. You all know the case. I know  
17 the case. I've done the homework. I don't think myself  
18 or my staff got any sleep last night. We've been doing  
19 research. I bet if I called all of your wives and asked  
20 if you got any sleep, they'd be saying, "No. When is my  
21 husband going to get some sleep," right? So we're going  
22 to have a hearing, and I don't care if it's today or  
23 Monday. I'll come here Saturday, if you would like. I  
24 don't care. Let's get some answers, let's get a bottom  
25 line, and let's get this moving to the Court of Appeals

1 because that's where you all are headed. I don't care  
2 what side you're on. Someone is going up, right? So I  
3 have answers for you. Tell me your story. I've got the  
4 solution. You might not like it.

5 Can we move on?

6 MR. QUASARANO: We're prepared to go today, or  
7 we'll defer to brother counsel for Monday if more time is  
8 needed.

9 MR. WERTHEIMER: I'll go today. We can go  
10 right now, I mean.

11 THE COURT: Okay. I can go right now too.  
12 How about you, sir?

13 MR. CANZANO: I think we already agreed that  
14 Webster could go today.

15 MR. DEVLIN: Very well.

16 THE COURT: We have an agreement. I think that  
17 might be the only thing you all agree on. Hallelujah.

18 MR. QUASARANO: Other than it's very hot  
19 outside.

20 THE COURT: Yeah. We can agree on that too.  
21 Okay.

22 Counsel? Well, let's let these gentlemen enter  
23 so we don't make noise for the court reporter before we  
24 proceed.

25 Anybody else need to make an appearance?

12

1 Flowers will apply to Webster as well. The fact that  
2 this case is now before the bankruptcy court means that  
3 there is a court of competent jurisdiction that can hear  
4 many of the concerns of the Plaintiffs. And that fact  
5 alone changes a lot of the ripeness arguments and things  
6 that you will see.

7 Nonetheless, it is the position of the State  
8 that there has not been harm at this point to the  
9 Plaintiffs.

10 THE COURT: Sir, there hasn't been harm because  
11 they haven't acted. What we have here, and I would like  
12 you to get to the point, because -- and you can make your  
13 record. I'm a very patient judge. I think most people  
14 will agree with that. But I have two very serious  
15 concerns because there was this rush to bankruptcy court  
16 that didn't have to occur and should not have occurred.  
17 And certainly Plaintiffs should not have been blind-  
18 sided, and this Court and this process should not have  
19 been ignored.

20 We have the Michigan Constitution Article IX, §  
21 24 that forbids the Emergency Manager to file bankruptcy  
22 if pension plans or retirement system of this State or  
23 its political subdivisions are diminished or impaired.  
24 And the Constitution states:

25 The accrued financial benefits of

14

1 THE COURTRoom: (No verbal response.)

2 THE COURT: No? Okay.

3 MR. CANZANO: Which case would you like to go  
4 first; Webster or Flowers?

5 THE COURT: Mr. --

6 MR. WERTHEIMER: Well, he goes first on Flowers  
7 because it's his motion, so it's not my --

8 THE COURT: Okay. Whatever you'd like.

9 MR. DEVLIN: Thank you, your Honor. My name  
10 is Brian Devlin, Assistant Attorney General.

11 THE COURT REPORTER: Could you approach the  
12 podium, please?

13 THE COURT: Yeah. If everybody would speak  
14 from the podium. The mikes work better. The court  
15 reporter has better access to hear you. We'll make a  
16 better record, and obviously the Court of Appeals and the  
17 Supreme Court will need your record, please.

18 MR. DEVLIN: Thank you, your Honor. Brian  
19 Devlin appearing on behalf of the Defendants.

20 As Mr. Quasarano has mentioned, that obviously  
21 there's been a very dramatic change in circumstances  
22 since the brief was filed. The petition in bankruptcy  
23 has been filed as of yesterday. It changes some aspects  
24 of this case from the State's perspective, but not all.

1 each pension plan and requirement  
2 system of the state and its  
3 political subdivisions shall be a  
4 contractual obligation thereof  
5 which shall not be diminished or  
6 impaired.

7 And the bankruptcy court will be doing exactly  
8 that in its reorganization because the pensions are an  
9 unsecured asset. And under the bankruptcy  
10 reorganization, under a reorganization Chapter 9, there  
11 is no reaffirmation of debt. If I were doing a Chapter 7  
12 and wanted to go in and reaffirm payments on my car, I  
13 could do so. But there is no way that you can go into  
14 bankruptcy court and say, "I am going to reaffirm the  
15 pension so that we don't disrupt that."

16 So what we're doing here is violating the  
17 Constitution. And then we have Michigan Complied Law  
18 141.1552, which precludes the Emergency Manager from  
19 taking such actions. It states specifically in m -- (m)  
20 and (ii):

21 The emergency manager shall fully  
22 comply with the public employee  
23 retirement system investment  
24 act --

<p>1                   -- 1965 PA 314, and § 24 of  2                   Article IX of the State  3                   Constitution of 1963, and any  4                   actions taken shall be consistent  5                   with the pension fund's qualified  6                   plan status under the federal  7                   internal revenue code.</p> <p>8                   So tell me, sir, how do you get into bankruptcy  9                   court and not violate the Constitution of Michigan and  10                  not violate how the Emergency Manager is supposed to  11                  operate? Haven't we jumped the gun? What are you doing  12                  here, sir?</p> <p>13                  MR. DEVLIN: I can understand your Honor's  14                  concerns. The position of the State is that none of  15                  these impairments have occurred yet.</p> <p>16                  THE COURT: Only because the bankruptcy trustee  17                  hasn't got his teeth into it. It will occur. It's  18                  imminent, isn't it? Tell me how it's not imminent, sir?</p> <p>19                  MR. DEVLIN: I can't predict the future.</p> <p>20                  THE COURT: Yes, you can.</p> <p>21                  MR. DEVLIN: I cannot.</p> <p>22                  THE COURT: The bankruptcy court -- the  23                  bankruptcy court has a certain function. You're a  24                  lawyer. You understand the function of the bankruptcy  25                  court. That's why you ran there yesterday not slowly but</p>	<p>1                   that they have the power to address under 943, is just  2                   that; it's just speculation.</p> <p>3                   THE COURT: It's a certainty, sir. You filed  4                   in bankruptcy court, which is federal because you know  5                   that certainty. I don't know how you get around it  6                   because it's an unsecured asset that cannot be  7                   reaffirmed, and there is no case law, and you know that  8                   as well because all of us stayed up all night looking for  9                   case law, and there is no case law. You can't tell me  10                  that it can be segregated out and reaffirmed.</p> <p>11                  So these people that have this pension where it  12                  is supposed to be protected under the Constitution and  13                  under the legislative intent under the emergency manager  14                  legislation, it cannot survive. It cannot survive  15                  federal bankruptcy, and I have no jurisdiction there, and  16                  you know that. And that's why everybody made us wait as  17                  -- slowly we were waiting for your office to come here  18                  out of courtesy. We waited so we would have both sides  19                  present, which is what we do. We honor civility, and it  20                  was filed in order to bind everybody so this could occur,  21                  and it's cheating, sir, and it's cheating good people who  22                  worked.</p> <p>23                  And so what's going to happen is we're not  24                  honoring the Constitution, we're not honoring the  25                  emergency manager legislation, and we're not honoring</p>
<p>16</p> <p>1                  in your running shoes, right?</p> <p>2                  MR. DEVLIN: I can't speak to that. I had  3                  nothing to do with it. But I can tell you about § 943 of  4                  the Bankruptcy Code, which affords all of the protections  5                  that we discussed in the brief that I've alluded to  6                  today.</p> <p>7                  None of those injuries have occurred at this  8                  point. For that reason, we believe the claim is still  9                  speculative. Of course those are legitimate concerns,  10                 but the court, the bankruptcy court can address them.</p> <p>11                 I referred to -- I'd also refer to <i>Straus</i>, the  12                 case cited in our brief too. If that injury has not  13                 occurred, as we contend, then it's an inappropriate  14                 remedy that the Plaintiffs are asking for today.</p> <p>15                 Now, obviously you and I don't see this injury  16                 in quite the same terms, but that is the position of the  17                 State. The injury has not occurred at this point.</p> <p>18                 THE COURT: That would be because the  19                 bankruptcy judge has not sat at his bench like I have and  20                 heard the case and started the reorganization, and that's  21                 the only reason. For me to believe what you're saying  22                 would be -- would make me Helen Keller who's not yet  23                 learned the alphabet.</p> <p>24                 MR. DEVLIN: I think anything that you and I  25                 speculate about that the bankruptcy court might order,</p>	<p>18</p> <p>1                  good citizens, and we're also not honoring the President  2                  who took Detroit out of bankruptcy. What are we doing,  3                  sir?</p> <p>4                  MR. DEVLIN: Your Honor, I understand what  5                  you're saying, but I would take exception to the motion  6                  that somehow the Attorney General's Office delayed or  7                  dragged its feet or in any way tampered with the  8                  proceedings yesterday. Now, I wasn't here. I wasn't  9                  part of them, but I don't believe that's the case.</p> <p>10                 THE COURT: It looks that way, sir. If somehow  11                 that's not the case, I apologize, but it's the old saying  12                 if it looks like a duck, you know the rest.</p> <p>13                 MR. DEVLIN: Well, I don't want to speculate on  14                 who did what yesterday. As I said, I wasn't here.</p> <p>15                 THE COURT: Thank you.</p> <p>16                 MR. DEVLIN: But it is our position that until  17                 that injury occurs and in light of <i>Straus</i>, in light of  18                 the jurisdiction of the bankruptcy court, that this  19                 motion should be -- er, the motion is inappropriate. The  20                 State's motion should be granted --</p> <p>21                 THE COURT: Sir --</p> <p>22                 MR. DEVLIN: -- thank you.</p> <p>23                 THE COURT: Let me ask you this: If the injury  24                 occurs, isn't it then too late, much too late, way too  25                 late for anybody to fix it? There's no way to fix the</p>

<p>1 injury. The leg has been amputated, and we cannot fix 2 it.</p> <p>3 MR. DEVLIN: We don't know, is my position on 4 that. We don't know, and there is opportunity for this 5 very issue to be heard in the bankruptcy court.</p> <p>6 THE COURT: But there is no opportunity in the 7 bankruptcy court for them to fix the harm. Do you have 8 any law that says the bankruptcy court can fix the 9 pension fund because I haven't found that either, and 10 I've looked?</p> <p>11 MR. DEVLIN: Again, I understand the pension 12 fund to be tremendously under funded. There are many 13 problems here, far beyond what's gone on in the last 14 24 hours. But the court, the bankruptcy court does have 15 jurisdiction to hear these arguments, to note the 16 Michigan Constitutional provisions, and to order what it 17 feels it must order.</p> <p>18 THE COURT: Okay.</p> <p>19 MR. DEVLIN: Thank you.</p> <p>20 THE COURT: Thank you.</p> <p>21 MR. WERTHEIMER: Your Honor, I'll be brief. 22 First, I would just point out to the Court that this is a 23 motion under C -- MCR 2.116(C)(4), (5), and (8): That 24 is, it's a claim that there is no jurisdiction over the 25 subject matter; it's a claim that my clients have no</p>	<p>1 just simply is not credible for an attorney for the 2 Governor and the State Treasurer to come here today and 3 say he can't predict the future when we indicated in our 4 complaint that the future could be predicted.</p> <p>5 I would also point out that since we were in 6 court yesterday, we now have not just the bankruptcy but 7 filings related to that bankruptcy. I'm not going to 8 introduce these documents, but I understand that counsel 9 in the Webster case that will be argued when we're done 10 here will be introducing them. I would simply point out 11 that we've got correspondence back and forth between the 12 Detroit Emergency Manager and the Governor requesting the 13 authorization and the Governor approving the 14 authorization, in which there is not a word mentioned 15 about Article IX, § 24 of the Michigan State 16 Constitution.</p> <p>17 Our Governor does not feel that that's 18 relevant. He goes on for pages in his authorization, 19 obviously for public relation's purposes, talking about 20 how deeply he cares about the city of Detroit, etcetera, 21 etcetera, but not one word about Article IX, § 24 of the 22 Constitution. And, of course, no such word from Mr. Orr 23 in his request to the Governor.</p> <p>24 So counsel's essentially saying "No harm yet." 25 Don't worry. Maybe bankruptcy court will take care of</p>
<p>20</p> <p>1 capacity to sue because apparently they're not being 2 injured; and it's a claim that we have failed to state a 3 claim.</p> <p>4 As to the law relating to those three points, I 5 would rely upon the briefs that I have filed, including 6 the reply brief that I filed yesterday in which I did 7 take the position that we should not hear -- that the 8 Court should not hear the motion to dismiss but in which 9 I dealt with all of those issues, and I won't repeat 10 those arguments.</p> <p>11 I would just point out a couple of things: 12 First of all, counsel says that he cannot predict the 13 future. The Detroit Emergency Manager, who is a 14 competent lawyer familiar with bankruptcy, has predicted 15 the future, and we quoted him in our complaint as saying, 16 essentially, that once he gets into bankruptcy, the 17 constitutional rights of our clients will disappear, will 18 be "trumped" in his words or in the words of the reporter 19 quoting him. And I think that was -- there was an 20 interview and there was also his statements made to the 21 Detroit Free Press Editorial Board.</p> <p>22 But the point being that the Detroit Emergency 23 Manager has had no reluctance to predict the future, and 24 his prediction is consistent with our claim and with the</p>	<p>22</p> <p>1 it." But the people who are taking it into bankruptcy, 2 have taken it into bankruptcy have made very clear 3 they're not going to take care of it in bankruptcy.</p> <p>4 And finally just the obvious point, but I think 5 needs to be reiterated with all the flurry going on that 6 the whole point of injunctive relief is to prevent a harm 7 that has not yet occurred, and that's all we're seeking 8 with our overall lawsuit and all we were seeking with our 9 motion for preliminary injunction, which this Court has 10 already granted. Thank you.</p> <p>11 MR. QUASARANO: Your Honor, I think that the 12 State's briefing and argument sufficiently presents the 13 State's position, but I know the Court is patient, and I 14 would ask the Court's indulgence on the one matter of my 15 appearance here yesterday, and I would like to make this 16 clear for the record, if I may, but for Mr. Wertheimer, 17 who is counsel for the Flowers and others case, I would 18 not have known that the General Retirement System of the 19 City of Detroit, et al., even had a TRO motion scheduled.</p> <p>20 The only communication I had with counsel for 21 that, those Plaintiffs, was the night before asking if we 22 could accept service on the Governor, which, as the Court 23 knows, we're barred from accepting service on behalf of a 24 State Defendant. Until the State Defendant is served, we</p>

<p>1 I was told there would not be any preliminary      2 injunction or TRO sought in that case. I do understand      3 that situation had changed in the hours after that. But,      4 but for Mr. Wertheimer calling me, counsel in another      5 case, I would not have known. When he called me, and the      6 transcript yesterday says it was around 3:30 or so, and      7 then I arrived as quickly as I could walk over here. So      8 there was no delay on behalf of the Attorney General's      9 Office to be here, to represent the State's interest, to      10 be here to answer this Court's questions. And any delay      11 at all was because we were notified by counsel for the      12 Plaintiffs yesterday that they intended to bring the      13 motion. Thank you for letting me clarify that.</p> <p>14 THE COURT: Thank you.</p> <p>15 Anything further, sir?</p> <p>16 MR. DEVLIN: Nothing further. Thank you.</p> <p>17 THE COURT: Defendants have filed a motion for      18 summary disposition pursuant to (4), which is:</p> <p>19         The Court lacks jurisdiction of      20                 the subject matter.</p> <p>21         This Court absolutely has jurisdiction of the      22 subject matter. It's a state question. I know they've      23 removed it to federal bankruptcy court, but we still have      24 very serious state questions. We have the State      25 Constitution, Article IX, § 24. We have an emergency</p>	<p>1 The opposing party has failed to      2 state a claim on which relief can      3 be granted.</p> <p>4 I see problems all over the place. I stated      5 them. I don't think I need to be redundant. Clearly      6 there are numerous claims and issues. I won't be      7 redundant. The relief requested is denied. Motion for      8 summary disposition is denied.</p> <p>9 MR. WERTHEIMER: Thank you, your Honor.</p> <p>10 THE COURT: Who's preparing the order?</p> <p>11 MR. QUASARANO: I'll be preparing it for you,      12 Judge.</p> <p>13 THE COURT: Thank you, very much, sir.</p> <p>14 MR. QUASARANO: Thank you.</p> <p>15 THE COURT: Next matter?</p> <p>16 MR. WERTHEIMER: We are -- I am done relative      17 to the Flowers case.</p> <p>18 THE COURT: Thank you, very much, sir.</p> <p>19 MR. WERTHEIMER: I'll vacate. I think there      20 are others lawyers in the room with another related case.      21 So I'll wait in the courtroom but vacate counsel table.</p> <p>22 THE COURT: Thank you.</p> <p>23 MR. WERTHEIMER: Thank you.</p> <p>24 MR. CANZANO: Your Honor, John Canzano on      25 behalf of the Plaintiffs in the Webster case. I would</p>
<p>1 manager statute, and we have a Constitution at issue.      2 State issues are within the purview of this Court. I      3 don't care that it was removed to bankruptcy court.      4 There is nothing here that tells me it was properly      5 removed to federal bankruptcy court because there is a      6 procedure in place of how it gets removed. And this      7 Court does not believe it was properly placed in the      8 hands of the bankruptcy court because it is going to      9 affect pensions. Once it affects pensions, which is      10 clearly what it's going to do, it's in violation, and the      11 Governor can't give permission for it to go to bankruptcy      12 court. It's very clear. I think a first-year law      13 student understands the concept. And I know the Governor      14 is not a lawyer, but he has very well paid lawyers who do      15 understand the concept.</p> <p>16         The party asserting the claim      17                 lacks the legal capacity to sue.</p> <p>18         That is MCR 2.116(5). A party asserting the      19 claim lacks the legal capacity to sue? How is that      20 possible? They're interested parties. Absolutely they      21 have capacity to sue. The pension's involved, the      22 pension related to the parties. I don't see any problems      23 there.</p> <p>24         And then we have (8), which is always a      25 catch-all.</p>	<p>1 like to clarify the relief that we are seeking here      2 today. We -- our complaint sought declaratory judgment      3 and preliminary injunction. Today we are seeking only a      4 declaratory judgment.</p> <p>5         I have taken the liberty of preparing an order      6 for declaratory judgment which I can present when I'm      7 done, and the Court may or may not want to say everything      8 that I've said in there, but I think we are entitled to      9 that relief. The briefs -- this has all been briefed      10 already. I don't need to go over that.</p> <p>11         The State's defense to our motion did not      12 contest the facts and did not contest the substance of      13 the merits of the law, which is that the Constitution      14 prohibits diminishment of pension -- accrued pension      15 benefits. They simply -- they simply said the case is      16 not ripe, and there is not an actual controversy for a      17 declaratory judgment.</p> <p>18         Now, after yesterday, it's obviously ripe. We      19 cited a case in our reply brief, <i>City of Lake Angelus</i>,      20 which amazingly is almost on all fours with this case. I      21 won't describe that case again except to say that that      22 was a case where the Attorney General made the argument      23 that there was no injury and there was no need for      24 declaratory judgment because a request to a tribunal had      25 not been made and the tribunal had not ruled. But the</p>

1 court correctly ruled that the -- there is an actual  
2 controversy because the parties need the court to tell  
3 them what their rights and obligations are so they know  
4 what to do in the future; whether this tribunal could  
5 overrule a local ordinance which prohibited sea planes on  
6 Lake Angelus, even though they hadn't been asked and they  
7 hadn't ruled. So that part is exactly what we have. Now  
8 we have the bankruptcy has been filed.

9 I would like to offer a couple exhibits, which  
10 are the July 16th letter from Emergency Manager Orr  
11 requesting authorization to file for Chapter 9, which  
12 amazingly this happened on Tuesday, and none of our --  
13 none of our crack reporters knew about this. Nobody knew  
14 about this until yesterday. This was a secret letter.

15 And the July 18th letter from yesterday of the  
16 Governor authorizing Emergency Manager Orr to file for  
17 Chapter 9. And I think if you look at these two letters,  
18 it is crystal clear what the judge has already concluded  
19 in the prior case; that not only does the bankruptcy  
20 threaten to impair but that that is the goal and the  
21 intent of the emergency manager is to impair accrued  
22 pension benefits in bankruptcy.

23 I'll give these to opposing counsel. These are  
24 -- they're a matter of public record now. I just wrote  
25 Exhibit A and Exhibit B on them.

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1 such action by the Governor is without authority and in  
2 violation of Article IX, § 24. And what happened  
3 yesterday was a violation of the Constitution.  
4 Now, my declaratory judgment order declares  
5 these statements. It also has a paragraph at the end  
6 that says:

7 In order to rectify his  
8 unauthorized and unconstitutional  
9 actions described above, the  
10 Governor must: One, direct the  
11 Emergency Manager to immediately  
12 withdraw the Chapter 9 petition  
13 filed on July 18th. And, two,  
14 not authorize any further Chapter  
15 9 filing which threatens to  
16 diminish or impair accrued  
17 pension benefits.

18 Now, this is just a declaratory judgment. So  
19 it is my hope that if the Court is willing to enter this,  
20 that the Governor will obey his oath of office and follow  
21 what the Constitution requires. And so -- and if he does  
22 not, then we may be back here on -- with another  
23 iteration of this that requires some type of injunctive  
24 relief.

25 At this time we're not seeking injunctive

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1 (Approaching the bench.)  
2 THE COURT: All right. Thank you.  
3 MR. CANZANO: As to the merits, I think again  
4 it is very clear this isn't a case where you need case  
5 law. You just read the Constitution. It says accrued  
6 pension benefits shall not be diminished or impaired.  
7 The Constitution says that. The Emergency Manager law  
8 says the Governor can authorize the Emergency Manager to  
9 file for Chapter 9. And it doesn't prohibit that -- it  
10 doesn't require that pension benefits be protected when  
11 he files for Chapter 9. And it is, therefore,  
12 unconstitutional to that extent.

13 THE COURT: Is there any objection to the Court  
14 receiving Exhibit A and B?

15 MR. DEVLIN: No objection, your Honor.

16 THE COURT: A and B are received. Thank you.

17 (At 12:04 p.m., Exhibit A and

18 Exhibit B is received.)

19 MR. CANZANO: So the emergency manager law is  
20 unconstitutional to the extent that it allows the  
21 Governor to authorize a Chapter 9 filing which threatens  
22 to diminish or impair pension benefits. And the Governor  
23 is prohibited by Article IX, § 24 from authorizing an  
24 emergency manager to proceed under Chapter 9 in a manner

25 which threatens to impair accrued pension benefits.

1 relief, so I would -- I would withdraw our request for  
2 preliminary injunction without prejudice. And I'd also  
3 ask, if this order is entered, that the temporary  
4 restraining order entered yesterday be vacated or  
5 expired, and all we want is a declaratory judgment right  
6 now.

7 THE COURT: And the reason to vacate or expire  
8 the temporary-restraining order?

9 MR. CANZANO: Because now we have the default  
10 judgment and the TRO. I don't remember what the court  
11 rule says, but it cannot only exist for a short period of  
12 time on its own, and this is the tact that we would like  
13 to take because we would like to tell the Governor, "This  
14 is what you're supposed to do." And then if he doesn't  
15 do that, then we'll then -- we'll reassess our options.

16 THE COURT: Okay. Thank you.

17 MR. CANZANO: May I present my draft order?

18 THE COURT: Yes. Have you presented it to the  
19 other side?

20 MR. CANZANO: I have not.

21 THE COURT: Thank you.

22 MR. QUASARANO: We've looked at this,  
23 your Honor.

24 MR. CANZANO: Just as to the matter of the

25 jurisdiction in the bankruptcy court, I don't think

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1 anyone is arguing -- I don't think the Attorney General  
2 is arguing that our case is stayed by the bankruptcy  
3 court because we're not suing the Emergency Manager.  
4 We're only suing the Governor and the Treasurer and the  
5 State of Michigan, and they're not -- they're not in the  
6 bankruptcy court. They're not the debtor, so that's an  
7 argument that has been raised. But, just for clarity, I  
8 wanted to point that out. That's all I have.

9 THE COURT: Thank you.

10 Response?

11 MR. DEVLIN: Thank you, your Honor. Brian  
12 Devlin again on behalf of the Defendants. I won't repeat  
13 the discussion we had on the Flowers case. Much of that  
14 applies. The relief sought in each of these cases is the  
15 same position of the State, is that the bankruptcy court  
16 jurisdiction has a great effect on this, and that the  
17 reliefs that might be desired by the Plaintiffs are  
18 available through that court. Furthermore, we'd cite the  
19 *Straus* case as well in this reply.

20 I would like to call the Court's attention to  
21 just one other thing: There was reference made to the  
22 Governor's obligation to uphold the terms of the United  
23 States -- of the State Constitution but that also applies  
24 to the United States Constitution, and bankruptcy court  
25 is certainly someone he may have to answer to as well.

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1 So that should not be lost sight of.

2 Finally, I wanted to point out that we do have  
3 a motion for summary disposition pending in this case as  
4 well. And I would rely on the arguments in the brief.  
5 And the ones I've just restated as well to ask that that  
6 relief be granted. Thank you.

7 THE COURT: Are you asking that that be heard  
8 now, or would you like me to make a ruling on that now?

9 MR. DEVLIN: I think you could probably make a  
10 ruling on it without further argument.

11 THE COURT: I think so too.

12 MR. DEVLIN: All right.

13 THE COURT: Okay.

14 MR. DEVLIN: Thank you.

15 THE COURT: Anything further?

16 MR. CANZANO: Nothing further, your Honor.

17 THE COURT: All right.

18 As to the motion for summary disposition in  
19 regard to Defendants' motion is denied. I'm going to  
20 incorporate the transcript, the arguments of the Flowers  
21 matter into this file. I think that in order to have a  
22 complete argument, we're going to consolidate the  
23 arguments and the files for the purpose of today because  
24 they are really united. They are part and parcel of the  
25 same arguments. We really can't have a complete

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same arguments. We really can't have a complete

1 transcript without looking at both.

2 So I'm going to direct the court reporter to  
3 treat today as one transcript despite there being two  
4 docket numbers, and I didn't even call both of them, but  
5 we just sort of started, but we're really dealing with  
6 Dockets 13-734-CZ and 13-729-CZ.

7 So the motion for summary disposition in regard  
8 to 13-734-CZ, and that's Defendants' motion for summary  
9 disposition is denied based on the same rationale the  
10 Court had and reasoning in the prior case.

11 In regard to the request for declaratory  
12 judgment, I think it is imperative that the Court sign  
13 this. It's absolutely needed. And the Governor, I have  
14 to believe, took his oath in all sincerity to uphold the  
15 United States Constitution and the State of Michigan  
16 Constitution. I hope he rereads certain sections and  
17 reconsiders his actions.

18 I am finding the actions that have been taken  
19 in regard to filing this action in the bankruptcy court  
20 as overreaching and unconstitutional as it applies to  
21 what the Detroit Emergency Manager Kevyn Orr has done in  
22 conjunction with the Governor.

23 So I find it absolutely necessary to sign this  
24 order of declaratory judgment. I am also going to order,  
25 in addition to what you have crafted here, that a copy of

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1 this order be forwarded to President Obama. I know that  
2 he's watching this, and he's bailed out Detroit. If this  
3 is going to ultimately proceed to bankruptcy without  
4 anyone paying attention to Michigan's Constitution and to  
5 what the legislature drafted and to what the Governor  
6 himself signed into law, then there will ultimately be a  
7 request that Obama will have to look at the pension, so  
8 he might as well follow this. He said in the news--that  
9 he's following this. He might as well see what we've all  
10 done here. It's that important to the State of Michigan  
11 and to the thousands of people who will be affected, and  
12 ultimately all of the taxpayers of the state of Michigan  
13 are going to be affected because we will all have to pick  
14 up the tab if this is not honored as it should be.

15 Additionally, I am asked that the temporary  
16 restraining order be quashed and nullified, so that is  
17 now withdrawn, and it expires today at 12:15. And the  
18 order of declaratory judgment is being signed as that  
19 expires.

20 Is there anything else for the record?

21 MR. WERTHEIMER: Not for the Plaintiffs in  
22 Flowers, your Honor.

23 MR. QUASARANO: I'm obliged, your Honor, to  
24 move for a stay of enforcement of the order of

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declaratory judgment

1           THE COURT: You are obliged. I am obliged as  
2 well to deny.

3           MR. QUASARANO: I'll have an order ready.

4 Thank you, Judge.

5           THE COURT: I look forward to signing all of  
6 those orders today. I will be in until 5 or so. And I  
7 haven't looked at Monday's docket. Have we taken care of  
8 all of Monday or not?

9           MR. WERTHEIMER: I think, as to the Plaintiffs  
10 in Flowers, you have because our motion was for  
11 preliminary injunction, which you have granted and will  
12 be providing us with that order, and their motion was for  
13 summary disposition, which you've denied. I believe that  
14 was all that was up in Flowers. So that the Flowers case  
15 continues, but there is nothing up for Monday in Flowers.

16           MR. QUASARANO: Defendants concur in Flowers.

17           THE COURT: Okay. My law clerk is making  
18 copies, multiple copies, of the order I've just signed.

19           I am here on a moment's notice as you all have  
20 become accustomed to if you need me.

21           MR. WERTHEIMER: Thank you, your Honor.

22           THE COURT: That's all for the record.

23           MR. CANZANO: Thank you, your Honor.

24 Appreciate the Court's ability and willingness to help us  
25 out on this urgent time.

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1           THE COURT: Thank you.

2           (At 12:16 p.m., the matter is  
3 concluded.)

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1 STATE OF MICHIGAN)  
2 ) SS.  
3 COUNTY OF INGHAM)

4

5  
6 CERTIFICATE OF REPORTER

7  
8  
9  
10  
11  
12 I, Melinda I. Dexter, Certified Shorthand  
Reporter, do hereby certify that the foregoing  
37 pages comprise an accurate, true, and complete  
transcript of the proceedings and testimony taken in the  
case of **Gracie Webster, et al.** versus **Richard Snyder, et  
al.**, Case Nos. 13-734-CZ and 13-729-CZ, on Friday,  
July 19, 2013.

13  
14 I further certify that this transcript of the  
15 record of the proceedings and testimony truly and  
16 correctly reflects the exhibits, if any, offered by the  
17 respective parties. WITNESS my hand this the nineteenth  
day of July, 2013.

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